



**[Billing Code: 6750-01-S]**

## **FEDERAL TRADE COMMISSION**

### **16 CFR Part 20**

#### **Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry**

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Final Revisions to Guides.

**SUMMARY:** The Commission has completed its review of the Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry (Used Auto Parts Guides or Guides) and has determined to revise and retain the Guides.

**DATES:** This action is effective as of August 22, 2014.

**ADDRESSES:** The document is available on the Internet at the Commission's website, [www.ftc.gov](http://www.ftc.gov).

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#### **SUPPLEMENTARY INFORMATION:**

##### **I. Introduction.**

The market for previously used automobile parts encompasses a broad range of parts and assemblies of parts previously used on vehicles (collectively, industry products or products). Industry products range from mechanical or body parts removed from a salvaged vehicle and put on a working vehicle without modification of any kind to parts that, after removal from the original vehicle, undergo substantial disassembly, rebuilding, inspection, and, in some instances, upgrading from their original condition, before being returned to service. The availability of these parts means vehicles stay in service longer

and for a lower price than if consumers had to rely only on new parts from the manufacturer. One commenter asserted that without rebuilt or remanufactured parts, 25% of the vehicles currently on the road, and a higher percentage of off-road vehicles (e.g., construction and farm equipment) would be out of service.<sup>1</sup> Savings to consumers from using rebuilt or remanufactured parts range from 20-50%.<sup>2</sup>

The Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry (Used Auto Parts Guides or Guides) provide advice to industry members on how they can avoid engaging in unfair or deceptive practices that violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.<sup>3</sup> The Guides deem certain practices to be unfair or deceptive, including the following:

1. Misrepresenting industry products as new or misrepresenting the amount of use of an industry product;
2. Misrepresenting the identity of anyone who worked on an industry product after it was removed from the original vehicle;
3. Misrepresenting the condition of an industry product or the amount of work done to it after its removal from the original vehicle.

## **II. Regulatory Review of the Guides.**

As part of its continuing program to review its rules and guides, the Commission

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<sup>1</sup> Automotive Parts Remanufacturers Association (APRA), p. 1.

<sup>2</sup> *Id.*, p. 1; Motor & Equipment Manufacturers Association (MEMA), pp 1-2 (MEMA submitted comments on behalf of its affiliated organization, Motor & Equipment Remanufacturers Association.)

<sup>3</sup> The final revised guides contain a new paragraph (b) in section 20.0 describing the purpose and status of the guides, which is consistent with the Commission's long standing treatment of its industry guides. *See* 16 CFR 1.5.

published a notice in the Federal Register on May 21, 2012, seeking written comments about the Used Auto Parts Guides, including their costs, benefits, and scope.<sup>4</sup> Twelve comments were received.<sup>5</sup> Five of the commenters expressed support for the Guides because of the benefits they provide for consumers and/or the marketplace and suggested no specific changes.<sup>6</sup> Three commenters recommended changes but also expressed

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<sup>4</sup> 77 FR 29922 (May 21, 2012).

<sup>5</sup> The commenters consisted of (a) six trade associations: American Insurance Association (AIA), Automotive Parts Remanufacturers Association, Automotive Recyclers Association (ARA), Electric Rebuilders Association, Global Automakers, and Motor & Equipment Manufacturers Association; (b) three consumer organizations: American Automobile Association (AAA), Consumers Union, and RetireSafe; (c) two businesses: Bryner Chevrolet (Bryner) and United Auto Supply; and (d) one individual, Andrew Stilnovic.

The Commission has decided to accept and consider the delayed submission of the AIA. This entity contacted the agency on August 14, 2012, eleven days after the August 3, 2012, close of the comment period, stating that it had tried to submit its comments online and thought it had done so successfully, but that its submission did not appear on the Commission's website with the other comments. The Commission notes that the document the AIA submitted on August 14 is dated August 3, 2012, and accepts the AIA's explanation that it thought it had submitted the comments on time.

The Commission declines to accept a secondary submission from MEMA after the close of the comment period on August 3, 2012. On August 28, 2012, MEMA sent a letter to then-Commission Chairman Leibowitz, along with proposed revisions to the Guides that would implement the suggestions in its original comment. MEMA did not explain its failure to include these materials in its original submission, which was timely. Thus, the Commission declines to accept the August 28 submission.

<sup>6</sup> AIA, p. 1 (“[T]he current Guides provide a level of consistency for the repair and insurance industries . . . We do not believe there are any changes needed at this time.”); Consumers Union, p. 1 (The Guides provide “a basic and necessary protection for consumers,” and are still needed “to protect consumers from deceptive practices and maintain high standards in the used car industry.”); Electric Rebuilders Association, pp. 1-2 (The Guides “provide clear and readily understandable rules for the marketing of used parts and the steps which must be taken before a used part can be sold as rebuilt or remanufactured.”); Global Automakers, p. 1 (“The Guides provide important safeguards for consumers and should be retained.” The terms used to describe automobile parts (original equipment manufacturer, aftermarket, rebuilt, remanufactured, salvaged, used)

support for the Guides.<sup>7</sup> Two commenters expressly made their support for the Guides contingent on the Commission accepting their suggested changes.<sup>8</sup> The two remaining commenters were not clear about their support for the Guides.<sup>9</sup>

The Commission has determined to retain and revise the Guides. The comments show a continuing need for the Guides for the benefits they provide, including both

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can be very confusing and without the Guides “consumers may not have the information they need to make informed purchase decisions.”); RetireSafe, p. 1 (The Guides “are well-crafted to protect consumers,” and the FTC should “avoid imposing any new regulatory burdens that may lead to additional costs being passed along to consumers.”).

<sup>7</sup> AAA, p. 1 (“AAA believes that the current FTC guidelines are extremely important to ensure that vehicle equipment information is accurately identified and labeled to avoid any confusion by consumers and automotive service and repair technicians. Overall, AAA endorses the Commission’s Used Auto Parts Guides and believes they should be retained.”); APRA, p. 2 (“The Association believes that the Guides are an important tool to ensure that previously used motor vehicle parts are properly identified and that parts labeled as ‘rebuilt’ or ‘remanufactured’ have received reconditioning appropriate to the use of those terms. Therefore, except for a few modifications suggested later in this letter, the Association believes that the Guides should be retained in their current form.”); Stilnovic (“These guides are most definitely needed in this industry.”).

<sup>8</sup> ARA, p. 1 (“ARA’s continued support of the publication of the Guides is only possible if amended.”); MEMA, p. 1 (“[T]he Guides are outdated and outmoded because they suggest that remanufactured automotive products and various used automotive products are largely equivalent . . .”), p. 5 (“We urge the FTC not to finalize the Guides in the current format, . . . [T]he Commission should overhaul the Guides to reflect this ongoing evolution of the remanufacturing industry.”).

<sup>9</sup> Bryner (“THANK YOU for addressing this issue. . . . The main concern I have with used parts is safety.”) (emphasis in original); United Auto Supply (“[I]t has been my experience that in MOST cases, commonly sold rebuilt/remanufactured/used aftermarket parts are clearly labeled and described correctly to the purchaser. . . . It has also been my experience that the marketplace quickly punishes anyone selling sub-standard parts of any kind, new, rebuilt, remanufactured, or used. I think there is a need for careful regulation, but there exists a risk if those regulations are hard to comply with. . . . It is my view that this problem is very well regulated by the marketplace. I am unaware of any major problems with mislabeled or misleading auto parts other than counterfeit parts which is another issue.”).

protections for consumers and clarity for industry members.<sup>10</sup> Further, the Guides do not appear to impose substantial costs; none of the commenters stated that compliance with the Guides is burdensome. On balance, it appears that the benefits of the Guides outweigh their costs. Therefore, the record supports retaining them. In addition, as set forth below, the record supports certain changes to the Guides. The Commission has considered numerous other changes proposed by commenters and concluded not to adopt them.

The remainder of this Section II summarizes the record and explains the Commission's decisions as to specific items.

**A. Terms used to describe industry products.**

Several commenters suggested that the Commission modify the Guides to define additional terms used to describe industry products. These commenters believed such definitions would further inform consumers as to the amount of work done on an industry product after its removal from the original vehicle.<sup>11</sup> Industry products come in a broad range of conditions. The current Guides define the terms “rebuilt,” “remanufactured,” and “factory rebuilt,”<sup>12</sup> but they also mention, “used,” “secondhand,” “repaired,” “reconditioned,” and “relined” as examples of “appropriate descriptive terms” for

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<sup>10</sup> See *generally supra*, note 6.

<sup>11</sup> See APRA, p. 2 (the Guides need to distinguish between a part on which no work has been done and a part on which some work has been done but not enough to qualify as “rebuilt” or “remanufactured”); Bryner, p. 1 (parts from a salvage yard should be labeled as such; “recycled” implies some work on a previously used part); MEMA, pp 3-4 (specify that “remanufactured” parts are neither new nor used); *but see*, AAA, p. 1 (the current guides are important to ensure accurate identification and labeling of parts); AIA, p. 1 (the current terms are appropriate and not in need of changing).

<sup>12</sup> 16 CFR 20.3.

industry products while leaving these terms undefined.<sup>13</sup> Commenters suggested a rough hierarchy of industry products, with “rebuilt” and “remanufactured” describing products receiving the most reworking and “used” or “salvaged” the least.<sup>14</sup>

The Commission recognizes that it is possible consumers might benefit from additional specificity in the meaning of terms used to refer to industry products, but based on the record, with one exception, it has determined not to change the way industry products are described. With the exception of MEMA, the commenters on this topic failed to identify what terms the Guides should define or to propose definitions for those terms. Moreover, overall, the commenters supported the Guides and believed they have been effective. In light of this support and the lack of comments suggesting specific definitions, the Commission believes the record supports only the one change described below, concerning the term “remanufactured.”

MEMA argued specifically that the Guides should be amended so as to differentiate “remanufactured” from “rebuilt”; the Guides now treat these terms as equivalent. MEMA asserted, without providing supporting data or other evidence, that including remanufactured products in the same category as products sold with little or no reworking confuses consumers. MEMA also argued that its definition of remanufactured comports with how international trade agreements use the word.<sup>15</sup>

MEMA proposed applying the term “remanufactured” only to industry products “produced using a *standardized industrial process* by which previously sold, worn or

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<sup>13</sup> 16 CFR 20.1(b).

<sup>14</sup> APRA, pp. 2, 5; Global Automakers, p. 1; MEMA, pp. 3-4; and Bryner.

<sup>15</sup> MEMA, pp. 2-3.

non-functional products are returned to same-as-new, or better, condition and performance.”<sup>16</sup> The standardized process, according to MEMA, is done in a factory and requires “technical specifications, including engineering, quality, and testing standards to yield *fully warranted* products.”<sup>17</sup> The process incorporates upgrades and corrects defects identified since the product first went on a vehicle.<sup>18</sup> MEMA urged the Commission “not to finalize the Guides in the current format, which does not properly recognize the significant advancements made by the U.S. remanufacturing industry over the past 30 years.”<sup>19</sup>

The Commission declines to adopt MEMA’s proposed definition of “remanufactured,” but, as discussed below, is revising the Guides to provide that the term “remanufactured,” like the term “factory rebuilt,” should be used only if the product was rebuilt “in a factory generally engaged in the rebuilding” of industry products. The Commission declines to adopt MEMA’s proposed definition of “remanufactured”

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<sup>16</sup> *Id.*, (emphasis in original).

<sup>17</sup> *Id.*, p. 3 (emphasis in original).

<sup>18</sup> MEMA distinguishes “remanufactured” from “rebuilt” parts. According to MEMA, an individual can rebuild a part without following the same procedure every time, and any specific rebuilt part may contain a high percentage of the components it originally contained. As we understand it, MEMA’s definition of remanufacturing involves complete disassembly of an industry product into components. An assembly line starts with one component, and as the line advances additional components are added, some new, some, perhaps, used. At the end of the line the remanufactured part is complete. Each remanufactured part, however, may contain few, if any components that were together originally, and assembly of each remanufactured part follows the same procedure. The remanufacturing process incorporates any upgrades, and corrects any defects identified, since the part was made originally, changes that, according to MEMA, may not occur in a part that is “factory rebuilt,” as that term is defined in the Guides. *See* 16 CFR 20.3.

<sup>19</sup> MEMA, p. 5.

because the Commission does not have a basis to believe that MEMA's specific proposal will necessarily improve consumers' understanding of the difference between remanufactured products and other industry products.<sup>20</sup> In addition, the record does not identify any costs or confusion resulting from definitions in the Guides not matching those in international trade agreements.

MEMA's comments, however, provided evidence that "remanufacture" involves a process performed in a factory setting in a way that "rebuilt" does not.<sup>21</sup> The Commission has, therefore, decided to change § 20.3 to delete "remanufacture" from subsection (a) and add it to subsection (b). Whereas the Guides currently impose the same requirements on use of the terms "remanufactured" and "rebuilt," the revised Guides provide the same requirements for the use of the terms "remanufactured" and "factory rebuilt."

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<sup>20</sup> Moreover, assuming, without deciding, that industry products meeting MEMA's definition of "remanufactured" are superior to "rebuilt," "factory rebuilt," or other industry products, adopting MEMA's proposed definition is not necessary to communicate this difference. Indeed, MEMA noted that it is developing "a certification program that will let consumers and commercial customers know that remanufactured parts from MERA are truly remanufactured." MEMA, p. 4 (MERA stands for Motor & Equipment Remanufacturers Association, an affiliate of MEMA.) The program would include "a process certification seal that can be affixed to the part and/or box and used in advertising and other promotional materials by participating companies." *Id.*

<sup>21</sup> MEMA, pp. 2-3. This distinction is also supported by reference to prevailing understandings of the terms. For example, Webster's Third New International Dictionary defines "manufacture" both as a noun ("the process or operation of making wares or other material products by hand or by machinery esp. when carried on systematically with division of labor") and as a verb ("to produce according to an organized plan and with division of labor"). WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1378 (2002). "Rebuilt," by contrast involves extensive repairs, reconstruction, restoration to a previous state, or remodeling, but does not indicate a systematic process. *See id.* at 1893.



## **B. Disclosures.**

The May 2012 Federal Register Notice posed two questions about the disclosures required by the Guides: (1) should the Guides define “clear and conspicuous,” and (2) should the Guides specify when an installer of an industry product must disclose the use of that product to the consumer.

### **1. Clear and Conspicuous.**

The Guides provide that “clear and conspicuous” disclosure that the product is used or contains used parts should be made when industry products are advertised or sold. These disclosures should appear in advertisements and promotional literature, on invoices, on packaging, and on the product itself. The current Guides suggest some descriptive terms to describe a product’s condition – “used,” “secondhand,” “repaired,” “remanufactured,” “reconditioned,” “rebuilt,” and “relined”<sup>22</sup> – and allow codes to describe the products on invoices between different sellers.<sup>23</sup> Beyond these statements, however, the Guides do not prescribe specific methods for providing “clear and conspicuous” disclosures.

One commenter responded on this point. The APRA suggested that the Guides return to the language from before their 2002 revisions. Before these revisions, the Guides not only gave examples of terms to describe industry products,<sup>24</sup> but also defined “conspicuous.” Conspicuous disclosures were:

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<sup>22</sup> “Recycled” may also be used if its usage complies with the Guides for the Use of Environmental Marketing Claims, 16 CFR 260.7(e).

<sup>23</sup> 16 CFR 20.1(b) (2013).

<sup>24</sup> 16 CFR 20.1(b)(1) (2000).

of such size or color contrast and so placed as to be readily noticeable to purchasers or prospective purchasers reading advertising, sales promotional literature, or invoices containing same, or reading any representation as to content on the container in which an industry product is packed, or inspecting an industry product before installation, or with a minimum of disassembly after installation.<sup>25</sup>

The APRA provided no data or other evidence on this point, but it believes that the pre-2002 language was “clearer and provided industry participants with a better understanding of how the quality of the part and the identity of the producer of the part had to be identified.”<sup>26</sup>

The Commission has decided not to change the current language regarding clear and conspicuous. The current Guides afford businesses flexibility in complying with the Guide’s disclosure provisions and avoid a definition that is too narrow to apply to the myriad situations in which a disclosure may be needed. Moreover, the record does not indicate that sellers of industry products are having difficulty understanding or applying the current language.<sup>27</sup> Therefore, the Commission has decided not to change this section of the Guides.

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<sup>25</sup> 16 CFR 20.1(b)(2) (2000).

<sup>26</sup> APRA, p. 9.

<sup>27</sup> In certain circumstances, the Guides do provide more information about the placement and conspicuousness of disclosures. *See* 16 CFR 20.2(b)

## 2. Timing of Disclosures.

Three commenters addressed the timing of disclosures to consumers, responding to the Federal Register Notice's request for input on whether the Guides should be changed to specify when an installer of an industry product must disclose the use of the product to a consumer.<sup>28</sup>

The AAA suggested that verbal disclosure of an industry product be required when an installer seeks verbal authorization to proceed with a repair. The AAA also suggested that signs in the installer's facility should state that industry products may be used and that use of an industry product be disclosed on the consumer's invoice. The AAA further recommended that engines, transmissions, and other assemblies represented to have "low mileage" be accompanied by documentation of their conditions, such as pictures and Carfax reports.<sup>29</sup>

The APRA asserted that the Guides complement laws in some states that require mechanics to disclose the use of industry products and that without the Guides such disclosures would be "more difficult and less effective."<sup>30</sup> The APRA, however, also asserts that disclosures by installers should be regulated by state or local agencies.<sup>31</sup>

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<sup>28</sup> The Guides would apply if the installer also manufactures, sells, distributes, markets, or advertises the industry product.

<sup>29</sup> AAA, p. 2. Carfax is a private company that, for a fee, provides title and insurance reports on specific vehicles, including any insurance claims for repairs. The claims history may alert a prospective purchaser of the car to check carefully for latent problems.

<sup>30</sup> APRA, p.5.

<sup>31</sup> *Id.*, pp. 9-10.

Mr. Stilnovic suggested that car dealers provide consumers interested in used cars with a pamphlet alerting the consumers to the Guides and disclosing any industry products in the vehicle the consumer is considering.

None of these commenters provided data or other evidence to support their positions or indicate the extent of the problems they address, and the Commission has determined not to modify the Guides without such information. The AAA's suggestions on disclosure have intuitive appeal. The existing record, however, does not contain specific evidence of a problem with the timing of disclosures, nor does the Commission possess other evidence of such a problem. The Commission will monitor developments in this area and revise the Guides if evidence of problems with the timing of disclosures about industry products arises.

Mr. Stilnovic's suggestion of a pamphlet disclosure given in connection with used cars would impose burdens on dealers, with uncertain benefits for consumers. The disclosure would inform consumers of the Guides, but such generic information may well be of little value at the time, when the consumer's focus is on the purchase of the vehicle, not on a specific part. In addition, requiring a dealer to disclose any industry products in a vehicle could require the dealer to disclose information it does not have, such as in situations when the dealer buys the vehicle at auction. For these reasons, the Commission has chosen not to adopt this suggestion.

### **C. Coverage of the Guides.**

The May 2012 Federal Register Notice requested comments on whether tires should be covered by the Guides and whether the existing list of vehicles to which the Guides applied was sufficient or whether off-road vehicles such as all-terrain vehicles,

construction vehicles, and dune buggies should be covered.<sup>32</sup> Several commenters discussed one or more of these topics, although with little analysis or data to support their positions. The Commission has decided to add tires to the Guides, but not to change the description of vehicles whose parts are covered by the Guides.

1. Tires.

The current Used Auto Parts Guides expressly state that they do not apply to tires because tires are covered by a separate guide.<sup>33</sup> When the Used Auto Parts Guides were last reviewed, tires were covered by the Tire Advertising and Labeling Guides, which have since been rescinded.<sup>34</sup> The rescission announcement stated that changes in technology and tire marketing had made most of those guides obsolete and that intervening regulations by the National Highway Traffic Safety Administration already required disclosure of information consumers were likely to want when purchasing tires; the few remaining provisions of the tire guides did not warrant keeping them as a separate regulation. The rescission announcement noted that used and retreaded tires are seldom found in the consumer market but account for as much as 60% of the large truck market. The rescission announcement also noted that the failure to disclose that a tire was used or retreaded would likely constitute deception in violation of Section 5 of the FTC Act.<sup>35</sup>

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<sup>32</sup> 77 FR 29922, 29923-29924 (May 21, 2012).

<sup>33</sup> 16 CFR 20.0.

<sup>34</sup> 69 FR 56932 (September 23, 2004).

<sup>35</sup> 69 FR at 56933.

The Commission believes the Used Auto Parts Guides should now apply to tires. The risk of overlap or contradiction between the Guides and the tire guides no longer exists, and continuing to exclude tires from the Used Auto Parts Guides could be interpreted to mean that sellers need not disclose when tires are used or retreaded. The Commission notes that two of the three commenters on this topic support having the Guides apply to tires.<sup>36</sup> Therefore, § 20.0 of the Guides has been changed to remove the last sentence, which contains the exclusion, and to add tires to the example list of industry products.

## 2. Vehicles Whose Parts are Covered by the Guides.

The current Used Auto Parts Guides apply to parts “designed for use in automobiles, trucks, motorcycles, tractors, or similar self-propelled vehicles.”<sup>37</sup> The Commission requested comments on whether this list adequately described the vehicles to which the Guides should apply. The APRA, the only commenter on this issue, advocated expressly including off-road vehicles in the Guides because the benefits of

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<sup>36</sup> ARA, p. 7 (include tires in the Guides, but require “a visual appearance inspection and tread depth evaluation to determine whether a tire should be resold”); Stilnovic (include tires in the Guides so consumers know what they are getting). The Commission declines to adopt ARA’s inspection and evaluation requirements because the purpose of the Guides is to provide notice to consumers, not to establish quality standards.

The third commenter on this topic urged continued exclusion of tires because the terms used in the Guides to describe industry products have not been applied to used tires or “mean something different when applied to tires,” creating the potential for confusion. APRA, p. 13. The Commission does not believe the likelihood of confusion outweighs the benefits of ensuring that used tires are sold in a non-deceptive manner. Sellers of used tires are not required to use any of the terms mentioned in the Guides and may continue to use terms they have used in the past as long as the use is not deceptive.

<sup>37</sup> 16 CFR 20.0.

industry products are the same for owners of these vehicles as for owners of on-road vehicles and compliance by businesses would be easy. The APRA, however, did not identify existing buyer deception or seller confusion from the existing language.

The Commission has decided not to change the language in the Guides that describes the vehicles covered. From the single comment, the Commission cannot determine that a need for change exists or that any change would not have adverse effects that a more thorough record would reveal. Although it declines to amend the Guides in this regard, the Commission notes it has the authority to pursue sellers who deceive buyers of any product about that product's previous use or reworking. Section 5's broad prohibition against unfair and deceptive acts or practices continues to apply in these situations, regardless of whether the products are covered by the Guides.

#### **D. Education.**

The May 21, 2012, Federal Register Notice asked if there is a need to educate consumers or businesses about the Guides. Several commenters responded that there is such a need, and the AAA offered to collaborate with the Commission on educational efforts.<sup>38</sup> Similarly, the APRA encouraged the FTC to promote the Guides on its website, through private organizations, and consumer brochures.<sup>39</sup>

The ARA urged the FTC to educate consumers about the potential biases of manufacturers promoting original parts.<sup>40</sup> MEMA requested that the Commission educate the public on the quality and benefits of remanufactured products and to support

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<sup>38</sup> AAA, p. 2.

<sup>39</sup> APRA, p. 12.

<sup>40</sup> ARA, p. 2.

MEMA's "Manufactured Again" certification program.<sup>41</sup> Mr. Stilnovic urged education regarding the potential presence of industry products in used cars. He also suggested that the Commission provide data showing how long industry products lasted versus new products, so consumers could make more informed decisions.

No change to the Guides is needed for the Commission to augment its educational efforts on this issue, and accordingly, no change has been made on this topic. The Commission will continue to look for opportunities to educate consumers about the benefits and drawbacks of industry products and to educate businesses about their obligations when selling such products.

**E. Other Comments.**

Commenters mentioned other topics, not discussed above.

**1. American Automobile Association.**

The AAA suggests that ten additional items be added to the forty-seven examples in the current Guides of parts that might be sold as industry products.<sup>42</sup> The Commission believes the examples should be up-to-date, but stresses that the Guides provide examples of industry products, and not an exhaustive list. Accordingly, the revised Guides include some of the parts suggested by the AAA, but other parts were removed to yield a shorter list of examples overall. No substantive change is intended by removing an item from the list. The revised list includes tires.<sup>43</sup>

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<sup>41</sup> MEMA, pp. 2, 4.

<sup>42</sup> AAA, p. 1; *see* 16 CFR 20.0.

<sup>43</sup> The current Guides list the following items as examples of parts that can be industry products: "anti-lock brake systems, air conditioners, alternators, armatures, air brakes, brake cylinders, ball bearings, brake shoes, heavy duty vacuum brakes, calipers,



2. American Parts Remanufacturers Association.

The APRA's comments included two suggestions not covered above.

a. The APRA believes that most industry products of American origin comply with the Guides but that products from foreign sources do not. The APRA suggested that the Commission (1) state explicitly in the Guides that they apply to foreign products; (2) work to increase awareness of the Guides among importers of industry products; (3) educate Immigration and Customs Enforcement about the Guides; and (4) monitor compliance with the Guides by importers. The APRA provided no indication of the scope of the alleged imported-part problem or explanation of why any Guide noncompliance that is occurring cannot be addressed through enforcement actions under Section 5 of the FTC Act.<sup>44</sup>

The Commission has determined that it is not necessary to amend the Guides as the APRA suggests. The Guides currently apply to the “manufacture, sale, distribution,

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carburetors, cruise controls, cylinder heads, clutches, crankshafts, constant velocity joints, differentials, drive shafts, distributors, electronic control modules, engines, fan clutches, fuel injectors, fuel pumps, front wheel drive axles, generators, master cylinders, oil pumps, power brake units, power steering gears, power steering pumps, power window motors, rack and pinion steering units, rotors, starter drives, speedometers, solenoids, smog pumps, starters, stators, throttle body injectors, torque convertors [sic], transmissions, turbo chargers, voltage regulators, windshield wiper motors, and water pumps.” 16 CFR 20.0.

The revised Guides list the following items as examples of parts that can be industry products: “airbags, alternators and generators, anti-lock brake systems, brake cylinders, carburetors, catalytic converters, differentials, engines, fuel injectors, hybrid drive systems and hybrid batteries, navigation and audio systems, power steering pumps, power window motors, rack and pinion units, starters, steering gears, superchargers and turbochargers, tires, transmissions and transaxles, and water pumps.” *See infra*, text of revised § 20.0.

<sup>44</sup> 15 U.S.C. 45.

marketing, and advertising” of industry products, and the Guides currently prohibit providing the means or instrumentality to others to violate the law. The Commission has jurisdiction over entities conducting business in the United States regardless of the country of origin of the original new product or of the reconstructed or otherwise used product. Therefore, as the Commission has explained previously, the Guides currently cover foreign rebuilders and importers of used auto parts who distribute or sell used auto parts in the United States.<sup>45</sup> Accordingly, a change in the Guides is not necessary for them to apply to importers. In addition, a change in the Guides is unnecessary to expand education efforts for businesses and other government agencies or to investigate possible violations of the FTC Act through non-compliance with the Guides.

b. The APRA also suggested that the Guides require original trademarks to be left on a rebuilt or remanufactured industry product. It argues that such information would give the consumer and/or installer greater assurance that the product was right for the consumer’s vehicle.

The Commission declines to adopt this suggestion. The current Guides and law allow original markings to be left on a part if (1) the part is properly disclosed as an industry product and (2) the reworker is identified (if the reworker is different from the original manufacturer).<sup>46</sup> There is no need for the Guides to require a reworker to retain trademarks of the original manufacturer. If a reworker believes leaving these marks on the part provides a marketplace benefit, it can do so, and consumers and installers can choose whether to purchase from those reworkers. A reworker who believes it benefits

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<sup>45</sup> 67 FR 9919, 9921 (March 5, 2002).

<sup>46</sup> 16 CFR 20.2; *Champion Spark Plug Co., v. Sanders*, 331 U.S. 125 (1947).

from removing original markings (in favor, for example, of promoting its own brand as a rebuilder), can adopt that practice, and consumers and installers can choose based on their own preferences.

3. Automotive Recyclers Association.

The ARA suggested three other amendments to the Guides, stating that its support for the Guides was contingent on its proposed changes.

a. The ARA requested that the Commission prosecute car manufacturers and dealers who run ads promoting new repair parts. The ARA argues that such ads unfairly or deceptively imply that industry products, including recycled original-equipment body parts, are not as good as new parts. The ARA believes such ads “cause consumers to doubt the viability of recycled parts and cause consumers needlessly to annually spend billions of dollars. FTC should use these guides to help ensure that such anticompetitive practices cease.”<sup>47</sup> The ads the ARA provided, however, are in trade publications and promote the benefits of new manufacturer parts. Such general statements to a sophisticated audience have little likelihood of being broadly problematic. While the Commission would evaluate claims of deception on a case-by-case basis, it concludes that no changes to the Guides are necessary to address ARA’s concerns. The Commission could take action against deceptive advertising, by car manufacturers or others, without changing the Guides.

b. The ARA believes the Guides should require car manufacturers to provide information on parts recycling in materials given to the consumer when the car is purchased as new. According to the ARA, European Union

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<sup>47</sup> ARA, p. 2.

directives promote recycling and require vehicle manufacturers to provide information on the “dismantling, storage and testing” of components when an item is no longer useful.<sup>48</sup> Similarly, the ARA wants the Commission to recognize private standards setting organizations for recycled “green” parts and to state in the Guides that use of industry products is a form of recycling.<sup>49</sup>

The Commission has decided not to make these changes. Historically, the Guides have neither promoted nor discouraged the use of industry products but have instead sought to ensure that consumers have accurate information from which to make a choice. The Commission sees no reason to deviate from this position.

c. The ARA requests that the Commission require online parts sellers to be licensed in the states in which they sell.<sup>50</sup> The Commission declines to make this change. The purpose of the Guides is to assist industry members in avoiding unfair or deceptive acts or practices in the advertising and sale of industry products, such as misrepresentations regarding the condition of products. The Commission declines to recommend licensing requirements for online sellers and has no authority to enforce state licensing laws.

4. Bryner Chevrolet.

Bryner Chevrolet took no explicit position on the Guides. Rather, it argued that safety-related industry products from a salvage yard – suspension, steering, and brake parts – are inherently dangerous and should not be used, even though insurance

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<sup>48</sup> *Id.*, p. 2.

<sup>49</sup> *Id.*, p. 6.

<sup>50</sup> *Id.*, p. 5.

companies prepare estimates that include these unsafe parts. Bryner’s comment fails to explain what changes to the Guides, if any, are needed to address its concerns.

The Commission has decided that Bryner’s comment warrants no changes to the Guides. The comment contains no data or other evidence with which the Commission can weigh the threat to consumer safety against the benefits of access to less expensive parts. Even if the data existed, the safety of vehicles and their parts fits better within the jurisdiction of the National Highway Traffic Safety Administration rather than the FTC.<sup>51</sup>

### **III. Section by Section Discussion of the Changes.**

In response to the comments received and the Commission’s own analysis, several changes have been made to the current Guides. This part discusses the changes to each section of the Guides.

#### **A. Title.**

The title has not been changed, other than to add a comma after “reconditioned,” for stylistic purposes. No substantive change is intended.

#### **B. Section 20.0 Scope and purpose of the guides.**

This section has undergone a number of changes, including the creation of two paragraphs. Paragraph (a) contains the existing § 20.0 with some revisions. First, the description of items to which the Guides apply (industry products) is changed from “used parts and assemblies containing used parts” to “parts that are not new, and assemblies containing such parts.” This change is intended to remove the circularity in the existing

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<sup>51</sup> See 49 CFR 1.94(b). (stating that the National Highway Traffic Safety Administration is responsible for “establishing and enforcing safety standards and regulations,” conducting research related to motor vehicle safety, and investigating safety-related defects in motor vehicles and motor vehicle equipment).

definition, in which “used” was part of the definition of “used.” The change also avoids potential confusion over the scope of industry products. “Used” sometimes refers to a part to which little has been done between its removal from one car and installation on another, with other terms applying to products receiving more reworking.<sup>52</sup> The change clarifies that “industry product” has a broad meaning that includes all parts that are not new, even parts that have been substantially reworked.<sup>53</sup>

Section 20.0(a) of the revised Guides differs from § 20.0 of the existing Guides in other ways. The last sentence and following parenthetical, which exclude tires from the Guides, have been removed and tires have been added to the sample list of industry products.<sup>54</sup> In addition, the sample list of industry products has been shortened and updated, but no substantive change is intended by these changes other than the addition of tires. Finally, the section has been edited for style and clarity, with no substantive change intended by these edits.

Paragraph (b) of revised § 20.0 is a new provision, describing the purpose and status of the Guides, which are consistent with the Commission’s long-standing treatment of industry guides.

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<sup>52</sup> *See supra*, note 13 and related text.

<sup>53</sup> The change does not create any new category of industry product. MEMA’s comment described remanufactured products as “Not New, Not Used.” MEMA, p. 2, but the use of “not new” in the revised Guides is broader than MEMA’s meaning of remanufactured.

<sup>54</sup> *See supra*, Section II.C.1.

**C. Section 20.1 Deception generally.**

Some of the language has been amended to improve readability. In addition, the order of the list of appropriate descriptive terms has been changed to approximate the amount of reworking that some industry members believe the terms indicate.<sup>55</sup> No substantive change is intended by any of these modifications.

**D. Section 20.2 Deception as to the identity of a rebuilder, remanufacturer, reconditioner, reliner or other reworker.**

Section 20.2, including the title, has been changed to add “other reworker” to those to whom this section applies. The persons and processes mentioned in this section relate to some ways of changing a part after its removal from a vehicle – “rebuild,” “remanufacture,” “recondition,” and “reline” – but other terms could also apply, including “overhaul,” “retread,” “repair,” and “refurbish.” Adding “other reworker” clarifies that, regardless of what is done to the part, the identity of the person doing it cannot be misrepresented, and may have to be disclosed. This section also contains stylistic changes designed to improve readability without changing the section’s substance.

**E. Section 20.3 Misrepresentation of the terms “rebuilt,” “factory rebuilt,” “remanufactured,” etc.**

The parenthetical at the end of § 20.3, referring to § 20.2, has been removed as unnecessary. No substantive change is intended. The word “remanufactured” has been removed from subsection (a) of this section and added to subsection (b). As discussed

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<sup>55</sup> See *supra*, note 13 and related text.

earlier, this change results in the same requirements applying to the terms “remanufactured” and “factory rebuilt.”<sup>56</sup>

### **List of Subjects in 16 CFR Part 20**

Advertising, Consumer protection, Motor vehicles, Trade practices.

For the reasons stated above, the Federal Trade Commission revises 16 CFR Part 20 to read as follows:

### **PART 20—GUIDES FOR THE REBUILT, RECONDITIONED, AND OTHER USED AUTOMOBILE PARTS INDUSTRY**

Sec.

20.0 Scope and purpose of the guides.

20.1 Deception generally.

20.2 Deception as to identity of a rebuilder, remanufacturer, reconditioner, reliner, or other reworker.

20.3 Misrepresentation of the terms “rebuilt,” “factory rebuilt,” “remanufactured,” etc.

**Authority:** 15 U.S.C. 41–58.

#### **§ 20.0 Scope and purpose of the guides.**

(a) The Guides in this part apply to the manufacture, sale, distribution, marketing and advertising (including advertising in electronic format, such as on the Internet) of parts that are not new, and assemblies containing such parts, that were designed for use in automobiles, trucks, motorcycles, tractors, or similar self-propelled vehicles, regardless of whether such parts or assemblies have been cleaned, repaired, reconstructed, or reworked in any other way (industry product or product). Industry products include, but

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<sup>56</sup> See *supra*, text following note 18.



are not limited to, airbags, alternators and generators, anti-lock brake systems, brake cylinders, carburetors, catalytic converters, differentials, engines, fuel injectors, hybrid drive systems and hybrid batteries, navigation and audio systems, power steering pumps, power window motors, rack and pinion units, starters, steering gears, superchargers and turbochargers, tires, transmissions and transaxles, and water pumps.

(b) These guides set forth the Federal Trade Commission's current views about the manufacture, sale, distribution, and advertising of industry products. The guides help businesses avoid making claims that are unfair or deceptive under Section 5 of the FTC Act, 15 U.S.C. 45. They do not confer any rights on any person and do not operate to bind the FTC or the public. The Commission, however, can take action under the FTC Act if a business makes a claim inconsistent with the guides. In any such enforcement action, the Commission must prove that the challenged act or practice is unfair or deceptive in violation of Section 5 of the FTC Act.

#### **§ 20.1 Deception generally.**

(a) It is unfair or deceptive to represent, directly or by implication, that any industry product is new or unused when such is not the fact, or to misrepresent the current condition, or extent of previous use, reconstruction, or repair of any industry product.

(b) It is unfair or deceptive to offer for sale or sell any industry product without disclosing, clearly and conspicuously, in advertising, in promotional literature, on invoices, and on the product's packaging that the item is an industry product. Additionally, it is unfair or deceptive to offer for sale or to sell any industry product that appears new or unused without disclosing on the product itself that it is an industry

product, using appropriate descriptive terms with sufficient permanency to remain visible for a reasonable time after installation. Examples of appropriate descriptive terms include, but are not limited to “Used,” “Secondhand,” “Repaired,” “Relined,” “Reconditioned,” “Rebuilt,” or “Remanufactured.” If the term “recycled” is used, it should be used in a manner consistent with the requirements for that term set forth in the Guides for the Use of Environmental Marketing Claims, 16 CFR 260.7(e). On invoices to the trade only, the disclosure may be by use of any number, mark, or other symbol that is clearly understood by industry members as meaning that the part so marked on the invoices is not new.

(c) It is unfair or deceptive to place any means or instrumentality in the hands of others so that they may mislead consumers as to the previous use of industry products.

**§ 20.2 Deception as to the identity of a rebuilder, remanufacturer, reconditioner, reliner, or other reworker.**

(a) It is unfair or deceptive to misrepresent the identity of the rebuilder, remanufacturer, reconditioner, reliner or other reworker of an industry product.

(b) If the identity of the original manufacturer of an industry product, or the identity of the manufacturer for which the product was originally made, is revealed and the product was rebuilt, remanufactured, reconditioned, relined, or otherwise reworked by someone else, it is unfair or deceptive to fail to disclose such fact wherever the original manufacturer is identified in advertising or promotional literature concerning the industry product, on the container in which the product is packed, and on the product itself, in close conjunction with, and of the same permanency and conspicuousness as, the disclosure that the product is not new. Examples of such disclosures include:

- (1) Disclosure of the identity of the rebuilder: “Rebuilt by John Doe Co.”
- (2) Disclosure that the industry product was rebuilt by an independent rebuilder: “Rebuilt by an Independent Rebuilder.”
- (3) Disclosure that the industry product was rebuilt by someone other than the manufacturer identified: “Rebuilt by other than XYZ Motors.”
- (4) Disclosure that the industry product was rebuilt for the identified manufacturer: “Rebuilt for XYZ Motors.”

**§ 20.3 Misrepresentation of the terms “rebuilt,” “factory rebuilt,” “remanufactured,” etc.**

(a) It is unfair or deceptive to use the word “Rebuilt,” or any word of similar import, to describe an industry product which, since it was last subjected to any use, has not been dismantled and reconstructed as necessary, all of its internal and external parts cleaned and made rust and corrosion free, all impaired, defective or substantially worn parts restored to a sound condition or replaced with new, rebuilt (in accord with the provisions of this paragraph) or unimpaired used parts, all missing parts replaced with new, rebuilt or unimpaired used parts, and such rewinding or machining and other operations performed as are necessary to put the industry product in sound working condition.

(b) It is unfair or deceptive to represent an industry product as “Remanufactured” or “Factory Rebuilt” unless the product was rebuilt as described in paragraph (a) of this section at a factory generally engaged in the rebuilding of such products.

By direction of the Commission.

Donald S. Clark,  
Secretary.

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